out in County of San Joaquin v. Budd,[7] "The court takes judicial notice of the fact as to who are the judges of the superior court of that county, and of their official acts,—that is, of such acts as can only be performed by a judge of that court in his official capacity. But the court can have no judicial knowledge that a person who is sued upon a promissory note, or made a defendant in an action to recover possession of real estate, and who may have the same name as a judge of the superior court, is in fact such judge." As the court points out, that case arose on demurrer. In the principal case, however, the question came up after verdict and the defendant could not have been misled in any way. The effect of the decision is to make the indictments in these liquor selling cases more prolix and the trials longer by the requirement of formal proof in every case of a matter which every one knows.

The function of judicial notice is to expedite trials by omitting proof of those things which it would be futile to dispute and which if disputed, would be capable of unquestionable demonstration. There can be no injustice by taking judicial notice of a fact clearly in issue for this merely means making a prima facie assumption which may be controverted by evidence. Judicial notice is one of the efficient means of shortening trials and the court should take advantage of the principle whenever it can be done without the sacrifice of substantial rights. The doctrine should not be confined to the cases for which an exact precedent can be found for neither the judges nor the legislators can possibly foresee every case that new times and new conditions will create.

T. B. R.

INSURANCE: DOUBLE INDEMNITY FOR INJURY IN PASSENGER ELEVATOR: WHAT CONSTITUTES A PASSENGER ELEVATOR.—Critics who have had little to do with the difficult art of interpretation are often heard to criticize courts because they refuse to attribute to words used in statutes or writings a uniform meaning, or because they fail to read them in a literal sense. Much unjust criticism was for instance, some time ago passed upon the Supreme Court of the United States because it read the words "restraint of trade" in the Sherman Act as in effect equivalent to "unreasonable restraint of trade". Such critics forget that the process of interpretation is not "a mere operation requiring the use of grammars and dictionaries, a mere inquiry into the meaning of words." The judge who is a master in the art remedies "by a sort of equitable jurisdiction, the imperfections of human language and powers of using language."[1]

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[7] (1892), 96 Cal. 47, 30 Pac. 967.

[1] F. Vaughan Hawkins, on the Principles of Legal Interpretation, reprinted in Thayer, Preliminary Treatise on Evidence at the Common Law, Appendix C.

A writer in the Green Bag a few years ago gathered together a number of instances from the decisions of the Massachusetts Supreme Court during a very short period of time showing how courts read statutes and writings so as to avoid injustice.[2] He found that the court had decided that a man who couldn't see might be an eye-witness,[3] that a staircase outside of the house might be in the house,[4] that a will giving John's three children certain property would be satisfied by giving the property to John's sister Mary's two children and his brother Ed's child.[5] Each of these decisions was, under the facts presented in the different cases, just and proper.

In *Wilmarth v. The Pacific Mutual Life Insurance Company of California*,[6] an elevator originally constructed for the purpose of carrying freight had been used by its owner to carry passengers in considerable numbers. The court had to determine whether this was a freight or a passenger elevator within the meaning of a policy of accident insurance which gave double indemnity if the insured were killed in a passenger elevator. The court held that it was a passenger elevator, within the meaning of the policy.

A couple of hypothetical cases may be stated to illustrate the difficulty of the problem which the court had to decide,—should construction or use be the test? If a statute imposed a penalty for the carriage of passengers in freight elevators, we surmise that no use could change the original character of the elevator, which must be defined by its construction. On the other hand, if a tax were levied on passenger elevators and one at a different rate on freight elevators, the use, rather than the construction would, we imagine, be held to be the governing factor.

The definition in the case under comment is more difficult than in either of these hypothetical cases. The insurance company with great force urged that when the policy was issued it had in mind an elevator equipped with the safe-guards usually provided in passenger elevators, and that it did not mean to subject itself to the additional risk involved by the insured in riding in an elevator not so equipped. On the other hand, the owner of the elevator had become liable as a common carrier of passengers,[7] and the public, including the insured and the insurance company, might reasonably expect of him a degree of care commensurate with the additional risk so as to avoid the consequences of the increased liability.

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[2] 23 Green Bag 515.

[3] Lewis v. Brotherhood Accident Co. (1907), 194 Mass. 1, 79 N. E. 802.

[4] Nash v. Webber (1910), 204 Mass. 419, 90 N. E. 872.

[5] Polsey v. Newton (1908), 199 Mass. 450, 85 N. E. 574.

[6] (Oct. 5, 1914), 48 Cal. Dec. 366, 143 Pac. 780.

[7] Treadwell v. Whittier (1889), 80 Cal. 574, 22 Pac. 266, 5 L. R. A. 498, 13 Am. St. Rep. 175.

The fact that the contract was one of insurance was the ultimate basis of the conclusion of the court, which rests its decision upon the well worn principle that all doubts in such contracts must be resolved in favor of the insured. The courts seem not to have drawn much, if any, distinction in the matter of construction between the contract to indemnify and the contract to pay double indemnity, though it has been urged with some plausibility that the latter provision ought to be construed against the insured, who is already indemnified under the general terms of the policy, and seeks to obtain a special and peculiar benefit.[8] An extreme illustration of the rigor with which accident insurance policies are construed against the company is afforded by an English case, where the company insured a man, blind in one eye, under a policy agreeing to pay a certain amount to the insured upon the loss of the sight of one eye and double the amount upon the loss of the sight of both eyes. The insured afterwards lost the sight of his remaining eye, and the company was held liable to pay him for the loss of the sight of both eyes.[9] Even the primary rules of arithmetic must yield to the presumption against the insurance company!

O. K. M.

INSURANCE: WARRANTIES: GOOD FAITH IN CONTRACTS OF FIDELITY INSURANCE.—An example of the apparent injustice of the method of construing contracts of insurance, is furnished by the case of *Wolverine Brass Works v. Pacific Coast Casualty Company of San Francisco.*[1] The plaintiff's cashier applied to the defendant for an indemnity bond. According to the stipulations of the policy which was issued, the statements or answers made in reply to a letter addressed to the plaintiff, were declared to be warranties and were made a part of the contract of insurance. These statements were made in answer to inquiries which were put for the purpose of discovering whether the applicant had been, or was at that time, in arrears or in debt to the plaintiff. On the plaintiff's assurance, made in good faith, that the applicant had never been in arrears, the policy was issued. During the life of the bond, the cashier embezzled money from the plaintiff, and later, a prior embezzlement was discovered, concerning which the plaintiff was ignorant at the time it made the above mentioned statements. The California Appellate Court ruled that these warranties being false, the policy was void *ab initio,* regardless of the good faith of the plaintiff in making them.

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[8] Depue v. Travelers' Ins. Co. (1909), 166 Fed. 183, 189.

[9] Bawden v. The London etc. Assurance Co., [1892] 2 Q. B 534 (C.A.)

[1] (Dec. 11, 1914), 19 Cal. App. Dec. 802, rehearing denied, Feb. 10, 1915.